



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0806; FRL-9998-04-Region 9]

Air Quality State Implementation Plans; Approval and Promulgations; Hawaii;

Infrastructure SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) submission from the State of Hawaii regarding certain Clean Air Act (CAA or “Act”) requirements related to interstate transport for the 2008 ozone national ambient air quality standards (NAAQS). The interstate transport requirements consist of several elements; this approval pertains only to provisions requiring that SIPs prohibit sources or other types of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states. The EPA is approving Hawaii’s August 6, 2015 SIP submittal on the basis that it addresses two requirements of CAA section 110(a)(2)(D)(i)(I), which we refer to as prong 1 (significant contribution to nonattainment of the NAAQS in any other state) and prong 2 (interference with maintenance of the NAAQS in any other state). The EPA refers to SIP revisions addressing the requirements of section 110(a)(2)(D)(i)(I) as “good neighbor SIPs” or “interstate transport SIPs.”

DATES: This rule is effective on **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0806. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov*, or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA, 94105, (415) 947–4192, *tax.wienke@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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I. Background Information

On February 28, 2019, the EPA published a notice of proposed rulemaking (NPRM) proposing to approve the Hawaii Department of Health’s (DOH) August 6, 2015 submittal

addressing two requirements of CAA section 110(a)(2)(D)(i)(I).¹ A detailed discussion of Hawaii's good neighbor SIP and the EPA's rationale for approving the SIP revision is provided in the NPRM and will not be restated here.

II. Public Comment

The EPA's proposed action provided a 30-day public comment period that ended on April 1, 2019. During the comment period, we received one comment. We summarize the comment below and provide our response.

Comment 1: The commenter states that the EPA's preamble for its proposed action summarizes trajectory analyses submitted by Hawaii and that the EPA concludes that "[a] very small fraction of emissions arrives in the continental United States (U.S.) more than two days after release and a slightly larger fraction arrives five days after release." The commenter states that it is unclear whether this factual assertion was made by the state or whether it is the EPA's own conclusion. The commenter goes on to assert that it is not possible to conclude from wind trajectories what fraction of emissions from Hawaii reach the continental U.S. The commenter concludes by stating that the EPA cannot base its approval of the good neighbor SIP on this factual assertion, as it is not supported by the cited evidence.

Response 1: This statement is the EPA's own conclusion. We agree with the commenter that it is not possible to precisely quantify the fraction of emissions from Hawaii that reaches the continental U.S. based on the trajectory analysis submitted by Hawaii. This analysis establishes the time to transport emissions to the continental U.S., but does not address the deposition, chemical transformation, and dispersion that would occur during transport. Quantifying these factors would require modeling, which, as explained in our proposal, we do not believe is

¹ 84 FR 6736.

necessary for an isolated state such as Hawaii. However, based on the time and distance of transport, as well as the fact that a certain degree of deposition, chemical transformation, and dispersion would necessarily occur over such time and distance, we believe it is reasonable to conclude that the fraction of emissions from Hawaii that would reach the continental U.S. would be relatively small. The commenter has provided no evidence to contradict this conclusion.

Furthermore, this conclusion was only one factor in the overall weight of evidence analysis that we used to assess Hawaii's interstate transport obligations with respect to the 2008 ozone NAAQS. Another key factor was that Hawaii's total emissions of ozone precursors are significantly lower than emissions of these pollutants from several continental states, including Colorado.² Based on modeling, the EPA has found that Colorado's emissions do not contribute significantly to nonattainment in downwind states.³ Given that emissions from Colorado are over five times greater than those from Hawaii, and Colorado is more than 2,000 miles closer to nonattainment receptors than Hawaii, it is unlikely that Hawaii's emissions significantly contribute to nonattainment.

Comment 2: The commenter notes that the preamble to the EPA's proposed rule states that Hawaii's emissions are declining. The commenter asserts that the approval of a good neighbor SIP with respect to Prong 1 must be based on the effects that emissions from the upwind state are having on other states at this time, not on the effect of lower emissions projected to prevail in the future. The commenter states that the EPA's reference to future levels of emissions should not be part of the EPA's rationale for approving the SIP with respect to the Prong 1 requirement. The commenter acknowledges that the fact that future emissions are expected to be less than current

² 84 FR 6736, 6738.

³ 80 FR 72937 (November 23, 2015) (proposed rule); 81 FR 7706 (February 16, 2016) (final rule).

emissions can be considered in evaluating whether the SIP satisfies Prong 2. The commenter requests that the EPA more logically state its rationale for approval of the SIP.

Response 2: The commenter is incorrect that an approval of a good neighbor SIP with respect to Prong 1 must be based solely on the effects emissions from the upwind state are having on other states at this time. Prong 1 requires SIPs to include adequate provisions prohibiting emission “which will contribute significantly to nonattainment” in another state.⁴ The EPA has interpreted this phrase to refer to “sources that presently and at some point in the future ‘will’ contribute to nonattainment” and the D.C. Circuit Court has upheld this interpretation as reasonable in *North Carolina v. EPA* (“*North Carolina*”).⁵

Consistent with this interpretation, the EPA has routinely approved interstate transport SIPs that rely on future year modeling.⁶ In particular, as noted in the preamble to the proposed action, the EPA’s historical approach to addressing interstate transport under the good neighbor provision has been to evaluate states’ obligations to address downwind contributions using a multistep process. This process involves identifying downwind air quality problems; identifying upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; identifying the emissions reductions necessary (if any), considering cost and air quality factors to prevent the linked upwind states from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and adopting permanent and enforceable measures needed to achieve those emissions reductions.

⁴ CAA section 110(a)(2)(D)(i)(I).

⁵ *North Carolina v. EPA*, 531 F.3d 896, 914 (D.C. Cir. 2008).

⁶ See, e.g., 83 FR 65093 (Final approval of California’s interstate transport SIP for ozone, fine particulate matter, and sulfur dioxide); Cf. 76 FR 48208 (Cross-State Air Pollution Rule (CSAPR), promulgating federal implementation plans (FIPs) addressing good neighbor obligations for ozone and fine particulate matter); 81 FR 74504 (CSAPR Update, promulgating FIPs addressing good neighbor obligations for ozone).

When the EPA identified downwind air quality problems as part of the 2016 Cross-State Air Pollution Rule (CSAPR) Update, we used air quality modeling projections for the (then) future analytic year of 2017,⁷ consistent with the *North Carolina* decision.⁸ The EPA also used a 2017 compliance deadline to ensure that the emissions reductions achieved through implementing the CSAPR Update would be made prior to the July 20, 2018 moderate attainment deadline,⁹ again in conformance with *North Carolina*.¹⁰

Because Hawaii was not part of the EPA's air quality modeling analysis for the CSAPR Update, the EPA used a weight of evidence analysis to assess Hawaii's interstate transport obligations with respect to the 2008 ozone NAAQS. This approach included reviewing Hawaii's recent emissions history that showed emissions have decreased over time and are substantially lower than emissions from California, Arizona, Colorado, and Texas, as shown in Table 1 of our proposed rule,¹¹ and reviewing Hawaii's transport patterns using trajectory analysis. We then compared the emissions data and the distance between Hawaii and receptors in the continental U.S. with the much higher emissions levels and much smaller distances between upwind and downwind states with known, modeled linkages in the continental U.S. In other words, our analysis considered both the absolute level of recent emissions from Hawaii and the downward trend in these emissions. Based on this analysis, the EPA concludes that emissions from Hawaii will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. Our approval of Hawaii's interstate transport SIP is based on this determination.

⁷ 81 FR 74504, 74516. See 84 FR 6736 for additional details on the CSAPR Update.

⁸ 531 F.3d 914.

⁹ 81 FR 74504, 74516.

¹⁰ 531 F.3d 911-12 (holding that the EPA must coordinate interstate transport compliance deadlines with downwind attainment deadlines).

¹¹ 84 FR 6736, 6738.

III. Final Action

For the reasons described in our responses to comments, the comments received do not alter our proposed determination that emissions from Hawaii will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

Therefore, the EPA is approving Hawaii's 2008 ozone transport SIP, submitted by Hawaii DOH on August 6, 2015, as meeting the applicable requirements of CAA section 110(a)(2)(D)(i)(I) as a revision to the Hawaii SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The

EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*.

A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Infrastructure SIP, Interstate transport, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 30, 2019.

Deborah Jordan,
Acting Regional Administrator,
EPA Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart M — Hawaii

2. In § 52.620, amend the table in paragraph (e) by adding an entry for “Hawaii State Implementation Plan Revision to Address CAA Section 110(a)(2)(D)(i)(I) for the 2008 Ozone National Ambient Air Quality Standard, excluding Attachment 3” after the entry for “Hawaii State Implementation Plan Revision, National Ambient Air Quality Standards for 2008 Ozone and 2010 Nitrogen Dioxide, Clean Air Act Section 110(a)(1) & (2), excluding attachment 3, and appendices A, B, and C.”

The revisions and additions read as follows:

§ 52.620 Identification of plan.

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(e) * * *

EPA APPROVED HAWAII NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
State of Hawaii Air Pollution Control Implementation Plans for Nitrogen Dioxide, Ozone, PM _{2.5} , and Lead				
* * * * *				
Hawaii State Implementation Plan Revision to Address	Statewide	8/6/2015	<u>Insert Federal Register</u>	Approved SIP revision excludes Attachment 3 (“Summary of Public

CAA Section 110(a)(2)(D)(i)(1) for the 2008 Ozone National Ambient Air Quality Standard, excluding Attachment 3.		page number where the document begins and insert date of <u>Federal Register</u> publication]	Participation Proceedings”)
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[FR Doc. 2019-17125 Filed: 8/13/2019 8:45 am; Publication Date: 8/14/2019]